

## STATE OF ILLINOIS

### ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	01-0705
Northern Illinois Gas Company Reconciliation	:	
of revenues collected under gas adjustment	:	
charges with actual costs prudently incurred.	:	
Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
Northern Illinois Gas Company	:	
d/b/a NICOR Gas Company	:	02-0067
Proceeding to review Rider 4, Gas cost,	:	
pursuant to Section 9-244(c) of the Public	:	
Utilities Act.	:	
Illinois Commerce Commission	:	(Cons.)
On Its Own Motion	:	
-vs-	:	
Northern Illinois Gas Company	:	
d/b/a Nicor Gas Company	:	02-0725
Reconciliation of revenues collected under	:	
gas adjustment charges with actual costs	:	
prudently incurred.	:	

#### **Staff Objection and Motion for Additional Time to Respond to Data Requests**

Now comes the Staff ("Staff") of the Illinois Commerce Commission ("Commission"), and (1) seeks additional time in which to either respond to the data requests which were the subject of the ruling of the Administrative Law Judges, served January 6, 2004 ("1/6/2004 Ruling"), granting the Renewed Motion to Compel Discovery from Staff filed by Northern Illinois Gas Company ("Nicor" or "Company"), or to seek modification or clarification of, or relief from that Ruling, and (2) objects to Nicor Data Requests NG-ICC 1.29 through 1.37. In support of its Motion and objection, Staff states as follows:

1. Until the 1/6/2004 Ruling, Staff's position with respect to Nicor Data requests NG-ICC 1.01 – 1.58 had been that the requests were, as applied to "Staff," "unreasonably broad, unreasonably burdensome, and unlikely to lead to relevant material." (Staff's Response to Nicor's Corrected Motion to Compel Discovery from the Staff of the Illinois Commerce Commission, filed December 31, 2003, p. 3). Since receiving the 1/6/2004 Ruling, which limited the scope of Staff responses to "the energy- and finance-related personnel," Staff has been engaged in amassing material responsive to the requests as so modified.

2. The breadth of the materials requested is staggering, especially given the sheer number of actions required in order to comply, and the unavailability of some of the personnel described in the requests, even as limited, during the period from late January 6, 2004, to January 9, 2004. Furthermore, counsel has not had sufficient time to review all of the materials in order to determine if they are in fact within the scope of the request, and if so, to determine whether they are the subject of privilege or are otherwise not required to be provided in response to the request, or, to prepare individual responses that are specific to the data requests themselves. Because of illness and obligations in other cases, counsel will not be in a position even to provide an estimate of when some responses will be forthcoming until approximately February 9, 2004. Notwithstanding this, Staff is providing as much of the responsive materials as it can on January 9, 2004, as it attempts to use its best efforts, in good faith, to respond as quickly as practicable.

3. As further responsive materials are collected and reviewed, and as Staff counsel has prepared specific responses, they will be provided to counsel for Nicor. To

the extent it is Staff's position that any of the materials are not required to be provided, Staff counsel will provide the reasons for this position to counsel for Nicor.

4. Without in any way limiting any objection Staff may have to other individual requests, Staff hereby strenuously renews its objection to Nicor Data Requests NG-ICC 1.29 through 1.37.<sup>1</sup> Taken together, these data requests amount to a "what did you know and when did you know it" as to Nicor's use of a last-in first-out ("LIFO") method of accounting for gas in storage inventory. Even as modified by the 1/6/2004 Ruling, these requests would require every staff person described in that ruling to recount the moment at which he or she became aware of that accounting methodology, and the basis for that knowledge.

5. Staff has consistently objected to these data requests on the basis that they are "overly broad, unduly burdensome and unlikely to lead to relevant information."<sup>2</sup> For purposes of its renewed objection, Staff will focus on the lack of any likelihood that these data requests will lead to any information relevant to the resolution of any of the issues in this docket.

6. Staff's understanding of these consolidated proceedings is that they are essentially intended to resolve issues relating to the operation of the program Nicor implemented under tariffs filed in accordance with the Commission's Order entered November 23, 1999, in Docket No. 99-0127, and issues relating to any refunds that may

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<sup>1</sup> These data requests are set forth in full in Exhibit A to Nicor's Corrected Verified Renewed Motion to Compel Discovery from Staff of the Illinois Commerce Commission, which was filed on December 24, 2003.

<sup>2</sup> Staff Objections to Nicor's Data Requests NG-ICC 1.01 thru 1.58. These are set forth in full in Exhibit B to Nicor's Corrected Verified Renewed Motion to Compel Discovery from Staff of the Illinois Commerce Commission, which was filed on December 24, 2003.

be owing to Nicor customers as a result of the operation of the Company's Rider 6 in 1999, 2000, 2001, and 2002.<sup>3</sup>

7. Staff is unaware of any basis upon which the information sought in Nicor Data Requests NG-ICC 1.29 through 1.37 would be relevant to any material issue in these consolidated proceedings, or could lead to relevant and material information. The record in Docket No. 99-0127 speaks for itself, and presumptively contains the totality of information the Illinois Commerce Commission considered in ruling on Nicor's request for relief under Section 9-244 of the Public Utilities Act. What any member of the Commission's energy or finance-related staff might have known in the months preceding that filing cannot change what the Company, Staff witnesses, and other parties presented to the Commission in that Docket.

8. Whatever value the information sought by Nicor may have to the Company or its current or former officers and employees as to issues that exist or may exist in the future before another tribunal, Nicor has yet to demonstrate that such information is relevant to an issue pending before the Commission, or could lead to information relevant to an issue pending before the Commission. As such, Nicor Data Requests NG-ICC 1.29 through 1.37 should be determined to be irrelevant to this proceeding.

WHEREFORE, Staff counsel respectfully requests that the Administrative Law Judges assigned to this proceeding make a ruling providing until February 9, 2004, for Staff Counsel to provide a date for responses to Nicor Data requests NG-ICC 1.01 –

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<sup>3</sup> See the first ordering paragraph in the Commission's Second Interim Order in Docket No. 02-0067, entered December 17, 2002.

1.28, and 1.38--1.58, and rule that Nicor Data Requests NG-ICC 1.29 through 1.37 are irrelevant to this proceeding and need not be the subject of a further Staff response.

Respectfully submitted,

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